

FCC MAIL SECTION

Federal Communications Commission

DA 00-1146

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-246
Table of Allotments,)	RM-9593
FM Broadcast Stations.)	RM-9770
(Winslow, Camp Verde,)	
Mayer, and Sun City West, Arizona) ¹)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 17, 2000

Released: May 26, 2000

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the Notice of Proposed Rule Making ("Notice"), 14 FCC Rcd 10591 (1999), issued in response to a petition for rule making filed on behalf of Desert West Air Ranchers Corporation ("petitioner"), licensee of Station KFMR(FM), Channel 236C, Winslow, Arizona, proposing the reallocation of Channel 236C from Winslow to Camp Verde, Arizona, as that community's first local aural transmission service. Petitioner filed "Comments and Alternate Proposals," as well as reply comments. Capstar Royalty II Corporation ("Capstar")² filed reply comments as well as a withdrawal of objection. Late filed comments were filed by REC Networks ("REC"), to which petitioner filed a "Motion to Strike Late Filed Pleading".³ Additionally, petitioner filed a "Motion to Accept Supplement to 'Comments and Alternate Proposal'".⁴

2. As stated in the Notice, petitioner seeks to invoke the provisions of Section 1.420(i) of the

¹ The communities of Mayer and Sun City West, Arizona, have been added to the caption.

² Capstar, is the current licensee of Station KTTI, Channel 236C3, Yuma, Arizona, having acquired the station on February 6, 1998. Although Station KTTI was granted an upgrade to Channel 236C in MM Docket No. 90-19 (5 FCC Rcd 5912 (1990)), the station has never increased its facility. Therefore, Channel 236C remains in the FM Table of Allotments.

³ REC's comments were filed after the record closed in this proceeding and were not accompanied by a motion to accept to demonstrate good cause for its tardiness in responding timely. The Commission's Rules do not provide for a response period beyond that established in the Notice, and the filing date set forth in the Public Notice announcing the filing of counterproposals, unless specifically requested or authorized by the Commission. See § 1.415(d) of the Commission's Rules. Neither of those criteria is applicable here. As REC's pleading was filed after the last date for filing such responses, it is not entitled to consideration as no new developments or changed circumstances were presented to justify the late pleading, nor does it present any decisionally significant issue to warrant acceptance of its comments. As a result of our determination the petitioner's motion to strike has been rendered moot.

⁴ Petitioner requests leave to submit a supplemental pleading in response to Capstar's reply comments and withdrawal of objection. We will accept the supplement in order to provide a more complete record for resolution of this proceeding. See § 1.425 of the Commission's Rules.

Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

3. In its initial comments petitioner counterproposed the reallocation of Channel 236C from Winslow to Sun City West, Arizona, or to Mayer, Arizona, as a first local aural transmission service at either community.⁵ In support of its alternate proposals, petitioner advises that although it completed construction of Station KFMR, its coverage into Camp Verde and the adjoining area is unsatisfactory. In this regard petitioner claims that due to rugged terrain around Camp Verde, KFMR's signal experiences multipath interference causing undesirable reception to the service area. Therefore, petitioner has withdrawn its proposal to reallocate Channel 236C from Winslow to Camp Verde, opting instead to provide a first local service to Sun City West or Mayer, Arizona.

4. With regard to Sun City West, petitioner initially specified a site located 71.0 km north of the community at coordinates 34-16-35 NL and 112-07-30 WL, from which it alleges the requirement of Section 73.315 of the Commission's Rules to provide a 70 dBu signal over the entire community could be met, based on the standard prediction method of Section 73.313. Petitioner states that from that site, the proposed 60 dBu signal could provide service to 1,534,453 persons compared to the current Class C coverage from Winslow covering 127,723 persons, resulting in a net gain of 1,406,730 persons. However, petitioner reports that its preference to reallocate Channel 236C to Sun City West requires a change in the present reference point for Channel 236C, Yuma, at coordinates 32-40-22 NL and 114-20-13 WL, reserved for Station KTTI,⁶ to specify coordinates 33-22-00 NL and 114-21-00 WL. Petitioner alternatively requests the allocation of Channel 236C from Winslow to Mayer, Arizona, as its first local service as it is uncertain whether the Commission would modify the Yuma reference point based on past case law, and commits to apply at that community. Petitioner reports that the Mayer proposal could be made at coordinates 34-25-00 NL and 112-00-30 WL, which would not require a change for Channel 236C at Yuma. According to petitioner, from the proposed reference point for Mayer, the 60 dBu service area population would increase from 127,723 to 876,581 persons, representing an increase of 748,858. Petitioner adds that while the optional Mayer proposal is not as desirable as it would provide less coverage, and the availability of transmitter sites would be more limited, the service improvement would still be significant from a public interest perspective and urges favorable consideration of the alternate proposal should it be decided not to grant the Sun City West proposal. Further, petitioner advises that at least five signals will remain in the loss area whether the Channel 236C is reallocated to Sun City West or to Mayer, Arizona.

⁵ Public Notice of the counterproposal was given on November 4, 1999, Report No. 2369.

⁶ In this regard petitioner advises that Channel 236C was allotted to Yuma in Docket 90-19. Further, petitioner advises that although an application (File No. BPH-910910IH) was granted to allow Station KTTI to upgrade on Channel 236C, the authorization was eventually cancelled for failure to construct, and the channel has remained vacant for over three years.

5. Petitioner advises that the proposed use of Channel 236C at Sun City West (pop. 15,997),⁷ located in the Phoenix Urbanized Area, or Mayer (pop. 1,500), which is not located in or adjacent to an urbanized area, is mutually exclusive with its current allotment at Winslow (pop. 8,190), the latter of which will continue to receive aural service from fulltime AM Station KINO. Petitioner provided a Tuck analysis to demonstrate that Sun City West is an autonomous community, separate and distinct from the Phoenix urbanized area. See Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). Alternatively, as Mayer is not listed in the 1990 U.S. Census, petitioner also provided demographic information to establish that locality's qualifications as a community for allotment purposes. In this regard, petitioner advises that the Arizona Department of Economic Security estimates the 1997 population of Mayer as 2,200. Further, petitioner advises that Mayer is governed by a Board of Supervisors, and has its own Justice Court and Justice of the Peace. Additionally, petitioner advises that Mayer has its own zip code – 86633, fire department and water district, churches, two public libraries, schools, Chamber of Commerce, and numerous commercial establishments.

6. In response to the counterproposal Capstar initially opposed the petitioner's request to modify the reference coordinates for Channel 236C at Yuma, stating that it would hinder its ability to provide an improved service to the residents of that community.⁸ However, Capstar subsequently withdrew its objection after determining that upgrading Station KTTI to Channel 236C at Yuma would not be feasible, and advised that it does not intend to pursue an upgrade at that community.⁹ As a final note, Capstar states that no consideration has been received or promised to it for withdrawing its objection.¹⁰

7. As a result of Capstar's withdrawal of interest in pursuing Channel 236C at Yuma and the subsequent filing of its application to operate on Channel 236C3 at that community, petitioner filed a supplement to request the deletion of Channel 236C from Yuma.¹¹ In support thereof, petitioner claims that the requested deletion would enable it to specify a closer site from which to serve preferably Sun City West, or as a secondary choice, Mayer. In particular, petitioner advises that such action will enable it to specify a site at coordinates 34-14-33 NL and 112-21-53 WL (referred to as "Site One"), located 64.4 kilometers north from the center city coordinates of Sun City West (at 33-39-43 NL; 112-20-26 WL). Alternatively, petitioner urges that the revised site

⁷ Population figures reported herein were taken from 1990 U.S. Census data.

⁸ Capstar advises that it acquired Station KTTI in 1998, 1-1/2 years after the Commission cancelled the station's construction permit for Channel 236C.

⁹ Capstar has filed an application for a construction permit to resume operation on Channel 236C3 at Yuma specifying coordinates 32-38-31 NL and 114-33-37 WL (File No. BPH-20000330ABJ).

¹⁰ Since Capstar's objection was withdrawn, we find it unnecessary to address the petitioner's responsive comments to specify a new reference site for Channel 236C, Yuma, at coordinates 33-22-00 NL and 114-21-00 WL to accommodate the Sun City West proposal.

¹¹ Petitioner advises that it was not possible to submit its Supplement earlier in this proceeding as the Class C allotment at Yuma restricted its ability to specify a site closer to Sun City West. Additionally, petitioner believes that as a result of Capstar's withdrawal of interest in a Class C station, it is not necessary for the Commission to rule on whether to continue to protect Channel 236C at Yuma.

would enable it to serve Mayer, located 22 kilometers north thereof. Further, petitioner states that from Site One, principal community coverage can be provided to either community using the circular prediction method.¹² Alternatively, petitioner requests that in the event the Sun City West proposal does not prevail, that the deletion of Channel 236C at Yuma would enable it to serve Mayer at site coordinates 34-16-35 NL and 112-07-30 WL, (referred to as "Site Two"). Petitioner advises that Mayer is located 17 kilometers northwest of Site Two and well within the 67.7 km Class C 70 dBu contour. Additionally, petitioner avers that use of the amended site complies with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules as well, provided that Channel 236C is deleted at Yuma. Petitioner states that its amended site proposal provides a clearance of 34.9 kilometers to Station KTTI as a Class C3 facility at Yuma, and affords the possibility of a future upgrade by Station KTTI to Class C2 at its current site.

8. After a careful review of the record in this proceeding, we find that the Sun City West proposal cannot be granted consistent with the technical requirements of the Commission's Rules. Although Capstar has filed an application for Channel 236C3 at Yuma, no authorization has been issued to it. In accordance with Commission policy, as announced in Cut and Shoot, Texas, 11 FCC Rcd 16383 (1996), Channel 236C at Yuma must be afforded protection pursuant to Section 73.207(b) of the Commission's Rules until an authorization has been issued to operate on the lower class channel. Therefore, we will give no further consideration to the requested use of either of the petitioner's revised sites (*i.e.*, Site One at coordinates 34-14-33 NL and 112-21-53 WL, or Site Two at coordinates 34-16-35 NL and 112-07-30 WL) to accommodate the optional proposals, as each of those revisions is dependent upon the deletion of Channel 236C at

Yuma. Nor has petitioner presented any evidence to establish the existence of an alternate site, assuming an omnidirectional signal, that will deliver a minimum field strength of at least 70 dBu over the entire boundaries of Sun City West, pursuant to the requirements of Section 73.315 of the Commission's Rules.

9. However, based upon the information presented, we believe the public interest would be served by granting the petitioner's second alternative proposal to reallocate Channel 236C from Winslow to Mayer, Arizona, employing the fully-spaced site specified in its counterproposal at coordinates 34-25-00 NL and 112-00-30 WL, located 21.4 kilometers (13.3 miles) east of the community. In support of our determination we find that the reallocation to Mayer, a community not located in or near an urbanized area, would result in a preferential arrangement of allotments

¹² Petitioner states that its revised proposal nullifies its earlier request to utilize a transmitter site location that exceeded the 67.7 kilometer distance the Commission employs to determine the 70 dBu service radius for Class C allotments when the eventual transmitter site is not known. Its initial request premised its showing of an ability to provide principal community coverage to all of Sun City West based on the standard prediction method contained in Section 73.313 of the Commission's Rules rather than the circular prediction method.

pursuant to the Commission's change of community procedures. Applying those procedures, we compare the existing arrangement of allotments with the proposal using the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992).¹³ In making our comparison, the first two allotment priorities are not applicable here. No white or gray areas are involved. Rather, as Mayer will receive its first local aural transmission service (priority (3)), it is favored over retention of the allotment at Winslow (priority 4) as the latter community will continue to receive local service from fulltime AM Station KINO. Additionally, the reallocation will afford the petitioner an opportunity to increase its service area. Moreover, the allotment of Channel 236C to Mayer at coordinates 34-25-00 NL and 112-00-30 WL does not require a change in the Class C reference point for Channel 236C at Yuma. Further, our analysis indicates that the change in transmitter site for Station KFMR produces both a gain and loss area. In this regard, we find that the loss area for Station KFMR at Winslow contains 57,532 people in an area of 10,719 square kilometers, while the gain area at Mayer contains 458,723 people in an area of 15,379 square kilometers. Therefore, the allotment of Channel 236C at Mayer would produce a net gain of 401,191 people and an area of 4,660 square kilometers. The loss area will continue to receive at least five full-time reception services, and therefore is considered to be well served.

10. Additionally, a staff engineering review reveals that the requirements of Sections 73.207(b)(1) and 73.315(a) of the Commission's Rules can be met from the site specified herein for Channel 236C at Mayer. As Mayer is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government in this allotment is required, but has not been received. However, our engineering analysis has determined that proposed Channel 236C at Mayer appears to comply with the terms of the 1992 USA Mexico FM Broadcast Agreement, and therefore, we shall grant the proposal with the following interim condition:

“Operation with the facilities specified herein is subject to modification, suspension, or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement.”¹⁴

11. Accordingly, pursuant to the authority contained in Sections 4(I), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective July 10, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

¹³ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is afforded priorities (2) and (3).]

¹⁴ The announced condition is a temporary stipulation. Once an official response from the Mexican government has been received, the referenced condition may be eliminated.

<u>City</u>	<u>Channel No.</u>
Mayer, Arizona	236C
Winslow, Arizona	--

12. IT IS FURTHER ORDERED, That the optional request filed on behalf of Desert West Air Ranchers Corporation to allot Channel 236C to Sun City West, Arizona, IS DISMISSED.

13. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of Desert West Air Ranchers for Station KFMR(FM) (File No. BLH-19990723KC), IS MODIFIED to specify operation on Channel 236C at Mayer, Arizona, in lieu of Channel 236C at Winslow, Arizona, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

14. Pursuant to Commission Rules Section 1.1104(1)(k) and (2)(k), any party seeing a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Desert West Air Ranchers Corporation, licensee of Station KFMR(FM), is required to submit a rule making fee in addition to the fee required for the applications to effectuate the change in community of license at Mayer, Arizona.

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

16. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
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